

R156. Commerce, Occupational and Professional Licensing.

R156-46b. Division Utah Administrative Procedures Act Rule.

R156-46b-101. Title.

This rule is known as the "Division Utah Administrative Procedures Act Rule."

R156-46b-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Title 63G, Chapter 4, Subsection 58-1-108(1), and Subsection 58-1-106(1)(a). The purposes of this rule include:

- (a) classifying Division adjudicative proceedings;
- (b) clarifying the identity of presiding officers at Division adjudicative proceedings; and
- (c) defining procedures for Division adjudicative proceedings which are consistent with the requirements of Titles 58 and 63G and Rule R151-4.

R156-46b-201. Formal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by a request for agency action are classified as formal adjudicative proceedings:

- (a) special appeals board held in accordance with Section 58-1-402;
- (b) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as a formal adjudicative proceeding; and
- (c) board of appeal held in accordance with Subsection 15A-1-207(3).

(2) The following adjudicative proceedings initiated by a Notice of Agency Action are classified as formal adjudicative proceedings:

(a) disciplinary proceedings, except those classified as informal proceedings under Section R156-46b-202, that result in the following sanctions:

- (i) revocation of licensure;
- (ii) suspension of licensure;
- (iii) restricted licensure;
- (iv) probationary licensure;
- (v) issuance of a cease and desist order except when imposed through a citation;
- (vi) administrative fine except when imposed through a citation; and
- (vii) issuance of a public reprimand;
- (b) unilateral modification of a disciplinary order; and
- (c) termination of diversion agreements.

R156-46b-202. Informal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by other than a notice of agency action are classified as informal adjudicative proceedings:

- (a) approval or denial of an application for:
 - (i) initial licensure;
 - (ii) renewal or reinstatement of licensure;
 - (iii) relicensure;
 - (iv) inactive or emeritus licensure status;
 - (v) a tax credit certificate by a psychiatrist, psychiatric mental health nurse practitioner, or volunteer retired psychiatrist under Section 58-1-111; or
 - (vi) criminal history determination;
- (b) favorable or unfavorable determination, based on an application for criminal history determination pursuant to Section 58-1-310;
- (c) board of appeal under Subsection 15A-1-207(3);
- (d) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11;
- (e) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (f);
- (f) approval or denial of a request:
 - (i) to surrender licensure;
 - (ii) for entry into diversion program under Section 58-1-404;
 - (iii) for modification of a disciplinary order;
 - (iv) for correction of procedural or clerical mistakes; or
 - (v) for correction of other than procedural or clerical mistakes;
- (g) matters relating to diversion program;
- (h) citation hearings held in accordance with citation authority established under Title 58;
- (i) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as an informal adjudicative proceeding;
- (j) disciplinary sanctions imposed in a stipulation or memorandum of understanding with an applicant for licensure; and

(k) all other requests for agency action permitted by statute or rule governing the Division not specifically classified as formal adjudicative proceedings in Subsection R156-46b-201(1).

(2) The following adjudicative proceedings initiated by a notice of agency action are classified as informal adjudicative proceedings:

- (a) nondisciplinary proceeding which results in cancellation of licensure;
- (b) disciplinary proceedings against:
 - (i) a contractor, plumber, electrician, or alarm company licensed under Title 58, Chapter 55;
 - (ii) a controlled substance licensee under Subsection 58-37-6(4)(g); and
 - (iii) a contract security company or armored car company for failure to replace a qualifier as required under Section 58-63-306;
- (c) disciplinary proceedings initiated by a notice of agency action and order to show cause concerning violations of an order governing a license;
- (d) disciplinary proceedings initiated by a notice of agency action in which the allegations of misconduct are limited to one or more of the following:
 - (i) Subsection 58-1-501(2)(c) or (d); or
 - (ii) Subsections R156-1-501(1) through (5); and
- (e) disciplinary proceedings initiated by a notice of agency action concerning evaluation or verification of documentation showing completion of or compliance with renewal requirements under Subsection 58-1-308(4)(b).

R156-46b-301. Designation.

The presiding officers for Division adjudicative proceedings are as defined at Subsection 63G-4-103(1)(h) and as specifically established by Section 58-1-109 and by Section R156-1-109.

R156-46b-401. In General.

- (1) The procedures for formal Division adjudicative proceedings are set forth in Sections 63G-4-204 through 63G-4-208, Rule R151-4, and this rule.
- (2) The procedures for informal Division adjudicative proceedings are set forth in Section 63G-4-203, Rule R151-4, and this rule.

R156-46b-402. Response to Notice of Agency Action in an Informal Proceeding.

A written response or answer to the allegations in a notice of agency action or incorporated by reference into a notice of agency action that initiates an informal adjudicative proceeding may, as set forth in a notice of agency action, be required to be filed within 30 days of the mailing date of the notice of agency action or other date specified in the notice of agency action.

R156-46b-403. Evidentiary Hearings in Informal Adjudicative Proceedings.

- (1) Evidentiary hearings are not required for informal Division adjudicative proceedings unless required by statute or rule, or permitted by rule and requested by a party within the time prescribed by rule.
- (2) Unless otherwise provided, a request for an evidentiary hearing permitted by rule must be submitted in writing no later than 20 days following the issuance of the notice of agency action if the proceeding was initiated by the Division, or together with the request for agency action if the proceeding was not initiated by the Division.
- (3) An evidentiary hearing is required for the following informal proceedings:
 - (a) R156-46b-202(1)(f), board of appeal held in accordance with Subsection 15A-1-207(3); and
 - (b) R156-46b-202(1)(l), citation hearings held in accordance with Title 58.
- (4) An evidentiary hearing is permitted for an informal proceeding pertaining to matters relating to a diversion program in accordance with R156-46b-202(1)(k).
- (5) Unless otherwise agreed by the parties, no evidentiary hearing shall be held in an informal adjudicative proceeding unless timely notice of the hearing has been served upon the parties as required by Subsection 63G-4-203(1)(d). Timely notice means service of a Notice of Hearing upon all parties not later than ten days prior to any scheduled evidentiary hearing.
- (6) Parties shall be permitted to testify, present evidence, and comment on the issues at an evidentiary hearing in a Division informal adjudicative proceeding.

R156-46b-404. Orders in Informal Adjudicative Proceedings.

- (1) Orders issued in Division informal adjudicative proceedings shall comply with Subsection 63G-4-203(1)(i).
- (2) Issuance of a license or approval of related requests in response to a request for agency action is sufficient to satisfy the requirements of Subsection 63G-4-203(1)(i).
- (3) Issuance of a letter denying a license or related requests is sufficient to satisfy the requirements of Subsection 63G-4-203(1)(i). The letter must explain the reasons for the denial and the rights of the parties to seek agency review, including the time limits for requesting review.
- (4) Unless otherwise specified by the director, the fact finder who serves as the presiding officer at an evidentiary hearing convened in Division informal adjudicative proceedings shall issue a final order.
- (5) Orders issued in Division informal adjudicative proceedings in which an evidentiary hearing is convened shall comply with the requirements of Subsection 63G-4-208(1).

R156-46b-405. Informal Agency Advice.

(1) The Division may issue an informal guidance letter in response to a request for advice unless the request specifically seeks a declaratory order.

(2) A notice shall appear in the informal guidance letter notifying the subject of the letter that the letter is an informal guidance letter only and is not intended as a formal declaratory order. The notice shall also provide the citation where the requirements which govern declaratory orders are found.

KEY: administrative procedures, government hearings, occupational licensing

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Authorizing, and Implemented or Interpreted Law: 63G-4-102(6); 58-1-106(1)(a)